



The Attorney General of Texas

October 19, 1979

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Mr. John M. Thorne
Thorne, Thorne & Robertson, Inc.
P. O. Box 591
Grand Prairie, Texas 75051

Open Records Decision No. 228

Re: Whether the North Texas
Commission is a governmental body
under the Open Records Act.

Dear Mr. Thorne:

The North Texas Commission is a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area. The Commission has received a request for information which would be available under the Texas Open Records Act, V.T.C.S. article 6252-17a, if the Commission is within the definition of "governmental body" in section 2(1) of the Act. The relevant part of the definition provides that

'Governmental body' means:

....

(F) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof; . . .

The person requesting the information contends that the Commission is within this definition because it receives public funds. Under a sample contract submitted by the Commission, the City of Fort Worth was obligated to pay the Commission \$80,000 a year for three years. The Commission also receives funds from several other units of government. The Commission contends that money received from the City of Fort Worth and other units of government is paid pursuant to contracts to provide services, and that it is in the same position as any other private vendor who sells goods or services to a governmental body.

We believe it is clear that the legislature did not intend to extend the application of the Act to private persons or businesses simply because they provide specific goods or services under a contract with a governmental body. See Open Records Decision No. 1 (1973) (bank with governmental body's account not subject to Act). However, we have examined the contract in question here, and we do not believe it imposes a specific and definite obligation on the Commission to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser. Specifically, one provision of the contract purports to obligate the Commission to:

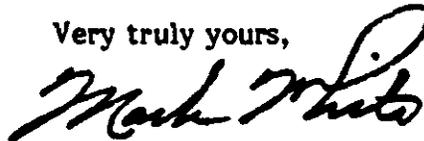
- (e) Continue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City's interests and activities.

Even if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of "supporting" the operation of the Commission with public funds within the meaning of section 2(1)(F). See Schwartzman v. Merritt Island Volunteer Fire Department, 352 So.2d 1230 (Fla. App. — 4th Dist. 1977), cert. den., 358 So.2d 132 (Fla. 1978); Byron, Harless, Schaffer, Reid and Associates v. State ex rel. Schellenberg, 360 So.2d 83 (Fla. App. — 1st Dist. 1978).

We note that we are not holding that any contract with a governmental body causes the records of a private contractor to be open under the Open Records Act. Nor are we holding that all records of a private entity are necessarily required to be made public if a portion of the entity is found to be supported by public funds. We are holding, however, that these records of the North Texas Commission are public under the Open Records Act since it receives funds from several public entities and has entered into contracts with these entities which result in at least a portion of the public funds paid to the Commission being used for the general support of the Commission rather than being attributable to specific payment for specific measurable services.

It is our decision that the receipt of public funds for support of the general activities of a private organization brings that organization within the definition of "governmental body" as defined in section 2(1)(F) of the Act, and that the information requested is public.

Very truly yours,



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APPROVED:
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